

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO REWEIGH DRUGS

Now comes the United States, by its attorneys, Michael J. Sullivan, United States Attorney, and David G. Tobin, Assistant U.S. Attorney, and hereby opposes the defendant's Motion to Reweigh Drugs. As grounds for its opposition, the United States avers the following:

1. The defendant was indicted for conspiracy to possess with intent to distribute, and to distribute, one hundred or more grams of heroin in violation of 21 U.S.C. § 841(b). The defendant was also indicted on thirteen counts of possession with intent to distribute, and distribution of, heroin.

2. The Drug Enforcement Administration's Northeast Laboratory in New York weighed the heroin obtained from the defendant during the thirteen controlled buys. The total weight of the heroin was 106 grams.

3. The home of co-defendant Federico Nivar was searched by federal and local law enforcement personnel and a quantity of heroin was found hidden behind a wall vent. The net weight of the

heroin was 48.0 grams, the amount of pure heroin was 13.4 grams.¹

4. The United States provided the defense with copies of all DEA-7 Reports and the worksheets and other documents produced by the laboratory pertaining to the heroin obtained from the defendant.

Argument

The United States respectfully submits that the defense has failed to articulate any reasonable grounds to warrant a court ordered re-weighing of the heroin in this case. The United States has complied with the defense request to produce the documents pertaining to the testing of the heroin. Additionally, the undersigned spoke with the chemist who weighed and tested the heroin about the procedures followed during the weighing and testing of the heroin and reported the contents of that conversation to the defense attorney. The United States has complied with all discovery requirements and the defense has the necessary information to cross-examine the chemist as to the procedure used to weight and test the drugs in this case.

¹The information pertaining to the weight of the heroin recovered during the search of co-defendant Nivar's home is from the DEA-7 for Exhibit 70, a copy of which has been previously provided to the defense.

Conclusion

The United States respectfully requests that this Honorable Court deny the defendant's motion for the above-stated reasons.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ David G. Tobin
DAVID G. TOBIN
Assistant U.S. Attorney

Dated: June 24, 2005